

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

DISTRICT COUNCIL 16 INTERNATIONAL UNION  
OF PAINTERS AND ALLIED TRADES, CARPET  
LINOLEUM & SOFT TILE WORKERS LOCAL UNION  
NO. 12

**DEFENDANTS**

MARK LEE AND YONG KAY, INC., doing  
business as BAY CONSTRUCTION COMPANY

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

DAVID A. ROSENFELD, BAR NO. 58163  
WEINBERG, ROGER & ROSENFELD  
1001 MARINA VILLAGE PARKWAY, SUITE 200  
ALAMEDA, CA 94501

Attorneys (If Known)

**E-filing**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations Act
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input checked="" type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
		<b>IMMIGRATION</b>		<input type="checkbox"/> 894 Energy Allocation Act
		<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
29 U.S.C. Section 185.

Brief description of cause:

Petition to enforce settlement agreement.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
DEMAND \$ 3,231.17  
☐ CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
"NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE  
August 21, 2008

SIGNATURE OF ATTORNEY OF RECORD

David A. Rosenfeld

DAVID A. ROSENFELD, Bar No. 058163  
WEINBERG, ROGER & ROSENFELD  
A Professional Corporation  
1001 Marina Village Parkway, Suite 200  
Alameda, California 94501-1091  
Telephone 510.337.1001  
Fax 510.337.1023

Attorneys for Petitioner  
DISTRICT COUNCIL 16 INTERNATIONAL UNION  
OF PAINTERS AND ALLIED TRADES, CARPET  
LINOLEUM & SOFT TILE WORKERS LOCAL UNION NO. 12

E-filing

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JCS

DISTRICT COUNCIL 16 INTERNATIONAL  
UNION OF PAINTERS AND ALLIED  
TRADES, CARPET LINOLEUM & SOFT  
TILE WORKERS LOCAL UNION NO. 12

CV 08

4020

PETITION TO ENFORCE AND  
CONFIRM GRIEVANCE  
SETTLEMENT

Petitioner,

v.

MAKE LEE AND YONG KAY, INC., doing  
business as BAY CONSTRUCTION  
COMPANY

Respondent.

The Petition of Petitioner respectfully shows:

**JURISDICTION**

1. Jurisdiction of this Court is based upon 29 U.S.C. §185, 28 U.S.C. §1331, 28 U.S.C. §1337 and 9 U.S.C. §4. Venue is appropriate in this district since the dispute arose in this district and the settlement agreement was executed in this district.

2. Petitioner DISTRICT COUNCIL 16 INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, CARPET LINOLEUM & SOFT TILE WORKERS LOCAL UNION NO. 12 ("Petitioner") is a labor organization within the meaning of 29 U.S.C. §152. It is a labor organization organized for the purpose of representing its members in their terms and conditions of

1 employment.

2 3. Respondent MARK LEE AND YONG KAY, INC., doing business as BAY  
3 CONSTRUCTION COMPANY ("Respondent") is an employer within the meaning of 29 U.S.C.  
4 §152 and does business within this judicial district.

5 4. A Collective Bargaining Agreement exists between Petitioner and Respondent,  
6 known as the Project Labor Agreement for the Oakland Unified School District. Petitioner and  
7 Respondent are both parties to this Project Labor Agreement. It contains a grievance and  
8 arbitration procedure.

9 5. In 2007, a dispute arose concerning Ralph Bunche Gymnasium Floor Project. The  
10 grievance was filed in August of 2007.

11 6. Under the terms of the agreement, the parties processed this through the grievance  
12 procedure. On April 10, 2008, the parties reached settlement and executed a settlement agreement,  
13 a copy of which is attached hereto as Exhibit "A".

14 7. Thereafter, Respondent issued a check as payment of the settlement. The bank  
15 would not cash the check.

16 8. Respondent has been requested to reissue the check to comply with the settlement.  
17 Respondent has failed and refused to do so.

18 9. Petitioner has been required to secure the services of counsel for the prosecution  
19 and enforcement of the settlement agreement. Because Respondent's refusal to comply with the  
20 settlement agreement is unjustified and in bad faith, Petitioner seeks attorneys' fees incurred to  
21 obtain compliance with the grievance and arbitration procedure.

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1 WHEREFORE, Petitioner prays that this Court issue an Order enforcing the settlement  
2 agreement and entering judgment against Respondent for the amount of the settlement agreement.  
3 Furthermore, Petitioner requests costs, attorneys' fees, and such other and further relief as this  
4 Court deems just and proper.

5 Dated: August 21, 2008

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: 

DAVID A. ROSENFELD  
Attorneys for Petitioner  
District Council 16 International Union of Painters  
And Allied Trades, Carpet Linoleum & Soft Tile  
Workers Local Union No. 12

11 1/502513

**BAY CONSTRUCTION COMPANY**  
4026 Martin Luther King Jr. Way  
Oakland, California 94609  
Tel (510) 658-7225 fax (510) 658-4890

## **SETTLEMENT AGREEMENT**

Date: April 10, 2008

Project Name: **Ralph Bunche Academy Gymnasium Repairs**  
Oakland Unified School District

Project #: 03028-223

On today's date a meeting took place at the office of Bay Construction Company where all parties met and came to an agreement, thus bringing the grievance matter to a final conclusion.

Agreement was made pursuant to the following terms:


- Settlement amount is: \$ 3231.17 paid to Local #12 Carpet & Linoleum Union
- Term of Payment: Immediate after signing of this agreement by all parties
- Local #12 Carpet & Linoleum Union consents and relinquishes all claims to work performed on the Ralph Bunche Academy Gym Repair project.
- Bay Construction Company has complied with all terms of the PLA Agreement of the Oakland Unified School District on this project and all monies withheld by the District should be released.

  
Bay Construction Company, Representative

4/10/08  
Date

  
Local #12, Representative

4/10/08  
Date

  
Building Trades Council of Alameda, Representative

4/10/2008  
Date